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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 111202715-1724-01]

RIN 0694–AF46

**Addition of Certain Persons to the Entity List; and Implementation of Entity List
Annual Review Changes**

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding two persons to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or

foreign policy interests of the United States. These persons will be listed on the Entity List under the United Arab Emirates (U.A.E.).

This rule also amends the Entity List on the basis of the annual review of the Entity List conducted by the End-User Review Committee (ERC). The ERC conducts the annual review to determine if any entries on the Entity List should be removed or modified.

This rule removes two persons located in Singapore and two persons located in Taiwan on the basis of the annual review, and revises the entry concerning one person located in Malaysia to add an alternate address.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

DATES: Effective Date: This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Fax: (202) 482-3911, E-mail: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List decisions

Additions to the Entity List

This rule implements the decision of the ERC to add two persons to the Entity List on the basis of Section 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the

EAR. The two entries added to the Entity List consist of two persons located in the U.A.E.

The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add the two persons located in the U.A.E. to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)-(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The two persons in the U.A.E. being added to the Entity List under this rule have been determined by the ERC to be involved in activities that could be contrary to the national security or foreign policy interests of the United States. Specifically, BIS's Office of Export Enforcement is investigating the presence of Blue Coat internet filtering devices in Syria and has developed evidence regarding the parties involved in the transfer of these devices to Syria. Waseem Jawad, using the company name Infotec, a.k.a., Info Tech, ordered multiple Blue Coat SG9000-20 Proxy devices in December 2010 from a Blue Coat authorized distributor in the U.A.E. That authorized distributor in turn placed an order for the devices with Blue Coat. A December 2010 email notification identified the end-user of the Blue Coat products for this order as the Ministry of Communication (National Telecom), Al Fadi Street, Baghdad, Iraq. In February 2011, the devices were

shipped from the United States to the United Arab Emirates, and ownership was transferred to Waseem Jawad, Info Tech, RAKFTZ, U.A.E. Approximately three days later, the devices departed the U.A.E. for delivery to Syria. Several of these devices have been identified by serial number as the devices being used by the Syrian Telecommunications Establishment in Damascus, Syria. The investigation is ongoing and additional parties related to these transactions may be added to the Entity List in the future.

For the two persons added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following two persons under two entries to the Entity List:

United Arab Emirates

(1) Infotec, a.k.a., Info Tech., Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.; and

(2) Waseem Jawad, Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.; and P.O.

Box: 25123, Dubai U.A.E.

Annual Review of the Entity List

This rule also amends the Entity List on the basis of the annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List. This rule implements the results of the annual review for entities located in Malaysia, Singapore, and Taiwan.

A. Removals from the Entity List

This rule removes four entities from the Entity List, which consists of two entities from Singapore and two entities from Taiwan. Specifically, this rule implements the decision of the ERC to remove two entities, Strive Components and Synoptics Imaging Systems Pte Ltd., located in Singapore, and two entities, Christine Sun and In-Tech Company, a.k.a., In-Tech Telecom, located in Taiwan, from the Entity List on the basis of the annual review of the Entity List, as follows:

Singapore

(1) Strive Components, Block 10 Toa Payoh Industrial Park Lor 8 #01–1221, Singapore, 319062; and

(2) Synoptics Imaging Systems Pte Ltd., 12 Lor Bakar Batu #06–09, Singapore, 348745.

Taiwan

(1) Christine Sun, 7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan; and

(2) In-Tech Company, a.k.a., In-Tech Telecom, Number 15, Lane 347, Jhongjheng Road, Sinji Huang City, Taipei, Taiwan, and 7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan.

The removal of the above-referenced four entities from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to the four entities. However, the removal of these four entities from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in section 736.2(b)(5) of the EAR which provides that, “you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.” Additionally these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, “BIS’s ‘Know Your Customer’ Guidance and Red Flags,” when persons are involved in transactions that are subject to the EAR.

B. Modifications to the Entity List

On the basis of a decision made by the ERC during the annual review, this rule amends one entry currently on the Entity List under Malaysia by adding an alternate address, as follows:

Malaysia

(1) VTE Industrial Automation SDN BHD, 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; and 45-02, Jalan Kenari 19A, Puchong Jaya, 47100 Malaysia.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION]. Any such items not actually exported or reexported before midnight, on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION], require a license in accordance with the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections

previously approved by the OMB under control numbers 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K._Seehra@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. § 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to

place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses, and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O.

12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 13, 2011, 76 FR 3009, January 18, 2011; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70391 (November 9, 2011).

2. Supplement No. 4 to part 744 is amended:

(a) By revising under Malaysia, in alphabetical order, one Malaysian entity;

(b) By removing under Singapore, the two Singaporean entities: “Strive Components, Block 10 Toa Payoh Industrial Park Lor 8 #01–1221, Singapore, 319062” and “Synoptics Imaging Systems Pte Ltd., 12 Lor Bakar Batu #06–09, Singapore, 348745”;

(c) By removing under Taiwan, the two Taiwanese entities: “Christine Sun, 7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan” and “In-Tech Company, a.k.a., In-Tech Telecom, Number 15, Lane 347, Jhongjheng Road, Sinjihuang City, Taipei, Taiwan, and 7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan”; and

(d) By adding under United Arab Emirates, in alphabetical order, two U.A.E. entities:

The additions and revisions read as follows:

Supplement No. 4 to Part 744 - Entity List

Country	Entity	License requirement	License review policy	Federal Register citation

MALAYSIA	*****			
	VTE Industrial Automation SDN BHD, 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; <i>and</i> 45-02, Jalan Kenari 19A, Puchong Jaya, 47100 Malaysia.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	73 FR 54503, 9/22/08. 76 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER].

UNITED ARAB EMIRATES	*****			
	Infotec, a.k.a., Info Tech, Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	76 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER].

	Waseem Jawad, Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.; <i>and</i> P.O. Box: 25123, Dubai U.A.E.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	76 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: December 12, 2011

Kevin J. Wolf

Assistant Secretary for Export Administration

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